

HONORABLE JAMES L. ROBART

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,
Plaintiff,

v.

MOTOROLA, INC., et al.,
Defendants.

No. C10-1823-JLR

REDACTED

DECLARATION OF MARCELO
PRIETO

NOTED: Friday, April 20, 2012

MOTOROLA MOBILITY, INC., et al.,
Plaintiffs,

v.

MICROSOFT CORPORATION,
Defendant.

I, Marcelo Prieto, hereby declare as follows:

1. I am over the age of 21 and make this declaration based on facts within my own personal knowledge. I make this declaration based on facts within my own personal knowledge and, if called upon to do so, I could and would testify competently to these facts.

2. For approximately the past 18 months, I have held the position of Senior Director, Volume Licensing Programs at Microsoft. Prior to that, I held the position of Director, Volume Licensing Programs for more than four years. In my current capacity, I am

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1 responsible for the definition and management of Microsoft's global portfolio of volume
2 licensing agreements.

3 3. I understand that Microsoft and Motorola, and/or their affiliates, are engaged in
4 patent infringement litigation in Mannheim, Germany and that, on or about April 17, 2012, the
5 court in Mannheim may issue an order that will permit Motorola, upon posting an appropriate
6 bond, to preclude Microsoft and its affiliates from (a) offering, distributing, using or importing
7 the Xbox 360 game console in Germany and (b) offering or supplying its software products
8 that support the H.264 standard in Germany (the "German order").

9 4. My statements in this declaration regarding the impact of the referenced
10 potential German order are based on my understanding set forth above in paragraph 3 and my
11 understanding that Microsoft intends to take all appropriate steps to ensure compliance with
12 such German order if and when it becomes effective.

13 Microsoft's Volume Licensing Programs

14 5. In general, a volume license allows a business or public sector customer to
15 license large numbers of Microsoft software products, quickly, efficiently, and at a volume
16 discount. Additional copies of the relevant products can be added by the customer as needed
17 and orders for new software products may be fulfilled online.

18 6. Microsoft offers a variety of volume licensing arrangements. Which
19 arrangement is most appropriate for a given customer depends on a variety of factors.

20 7. Specifically with respect to those Microsoft software products that support the
21 H.264 video compression standard, there are three primary types of volume licensing
22 agreement: (1) Enterprise Agreements, (2) Select Agreements, and (3) Open Agreements.

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24 8. Microsoft offers its business and public sector customers the option of entering
25 into an Enterprise Agreement, which can provide substantial savings and efficiencies over

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1 other software licensing arrangements. The typical Enterprise Agreement ("EA") has an
2 enrollment with a three-year term. During that term, the customer commits to deploy, across
3 its entire business, at least one "Enterprise Product". These products include an upgrade to the
4 latest volume licensing version of Windows (currently, Windows 7), Office, and key client
5 access licenses (CALs) that allow individual computers/devices to connect to a server (*e.g.*,
6 Enterprise CAL or Core CAL).

7 9. EA customers are entitled to volume pricing on other, non-Enterprise, software
8 products. These non-Enterprise Products need not be deployed across the entire business; the
9 EA customer can license as few or as many copies as needed.

10 10. Upon making an initial order of a given Microsoft software product, the EA
11 customer is licensed to deploy that software product on an unlimited number of
12 computers/devices. In the case of Enterprise Products, when the EA customer purchases new
13 qualifying computers or other qualifying devices, those computers or devices are automatically
14 licensed for the Enterprise Products, subject to annual reporting and payment requirements.

15 11. Every license acquired through an Enterprise Agreement includes Software
16 Assurance -- Microsoft's annuity program that entitles customers to new versions of the
17 software and other benefits. Customers can obtain access to and deploy those newer versions
18 of software products previously licensed under the Enterprise Agreement as long as the newer
19 version is released during the term of the enrollment.

20 12. On each anniversary of the agreement, the EA customer reports the number of
21 additional copies deployed for each software product, with payment dependent on the numbers
22 reported for each software product.

23 13. **REDACTED**
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LAW OFFICES
DANIELSON HARRIGAN LEYH & TOLLEFSON LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL. (206) 623-1700 FAX. (206) 623-8717

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7 14. Enterprise Agreements are structured to allow the EA customer to deploy
8 Microsoft software products on computers/devices located anywhere in the world.

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LAW OFFICES
DANIELSON HARRIGAN LEVY & TOLLEFSON LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL. (206) 623-1700 FAX. (206) 623-8717

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4 16. Another common volume licensing approach is for business customers to enter
5 into a "Select Agreement." Like Enterprise Agreement enrollments, Select Agreement
6 enrollments typically have a three-year term. Like EA customers, Select Agreement customers
7 obtain volume pricing on ordered Microsoft software product licenses. In addition, there also
8 is a "Select Plus" option, a newer version of the Select Agreement that has no expiration but
9 whose individual purchase orders have a limit of three years.

10 17. Unlike EA customers, Select Agreement or Select Plus customers need not
11 deploy any Microsoft software product across their entire enterprise. Thus, while new
12 qualifying computers and devices are automatically licensed for the EA customer, the same is
13 not true for the Select Agreement or Select Plus customer. Each new deployment of any
14 Microsoft software product must be licensed. Select Agreement and Select Plus customers
15 report the number of such deployments on a monthly basis, and pay accordingly.

16 18. While Microsoft typically contracts directly with its EA customers, the
17 relationship with Select Agreement and Select Plus customers is more commonly indirect, as
18 those customers primarily deal with Large Account Resellers ("LARs"), such as Dell, HP, and
19 a handful of other Microsoft partners. These LARs handle customer billing and other
20 administrative functions.

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LAW OFFICES
DANIELSON HARRIGAN LEYH & TOLLEFSON LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL. (206) 623-1700 FAX. (206) 623-8717

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9 20. **REDACTED**

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12 21. "Open Agreements" are another category of common volume licensing
13 arrangement, traditionally used by smaller organizations/customers. There are a number of
14 different types of Open Agreement, including agreements that can be roughly analogized to the
15 EA and Select Agreements.

16 22. The Open Agreement customer does not contract directly with Microsoft or one
17 of Microsoft's LAR partners. Instead, the Open Agreement arrangement most often consists of
18 a two-tiered distribution structure, where the Open Agreement customer deals with a Value
19 Added Reseller ("VAR"), who, in turn works with one of Microsoft's volume licensing
20 distributors.

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LAW OFFICES
DANIELSON HARRIGAN LEYH & TOLLEFSON LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL. (206) 623-1700 FAX. (206) 623-8717

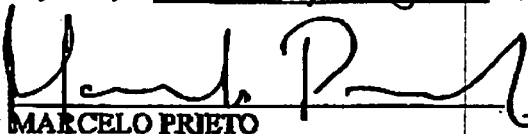
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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 22 day of March, 2012, at London, England.


MARCELO PRIETO

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LAW OFFICES
DANIELSON HARRIGAN LEVY & TOLLESON LLP
909 THIRD AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98104
TEL. (206) 422-1700 FAX (206) 422-0717

CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2012, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Attorneys for Defendants Motorola Solutions, Inc., Motorola Mobility, Inc., and General Instrument Corporation

Ralph Palumbo
Philip S. McCune
Lynn M. Engle
Summit Law Group

Steven Pepe
Jesse J. Jenner
Norman Beamer
Paul M. Schoenhard
Ropes & Gray

s/ Linda Bledsoe
LINDA BLEDSOE

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LAW OFFICES
DANIELSON HARRIGAN LEYH & TOLLEFSON LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL. (206) 623-1700 FAX. (206) 623-8717